

MDR Tracking Number: M5-04-4007-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division (Division) assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on July 22, 2004.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the majority of the medical necessity issues. Therefore, upon receipt of this Order and in accordance with § 133.308(r)(9), the Commission hereby Orders the respondent and non-prevailing party to **refund the requestor \$460.00.** for the paid IRO fee. For the purposes of determining compliance with the Order, the Commission will add 20-days to the date the Order was deemed received as outlined on page one of this Order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The work hardening from 9/16/03 through 10/7/03 **was found to be medically necessary.** The work hardening from 10/8/03 through 10/23/03 **was not found to be medically necessary.** The respondent raised no other reasons for denying reimbursement of the work hardening program.

ORDER

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20-days of receipt of this Order. This Order is applicable to dates of service 9/16/03 through 10/7/03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 8th day of November 2004.

Margaret Q. Ojeda
Medical Dispute Resolution Officer
Medical Review Division

MQO/mqo

Enclosure: IRO decision

October 29, 2004

Ms. Rosalinda Lopez
Texas Workers Compensation Commission
MS48
7551 Metro Center Drive, Suite 100
Austin, Texas 78744-1609

**NOTICE OF INDEPENDENT REVIEW DECISION
Amended Letter**

RE: MDR Tracking #: M5-04-4007-01
TWCC #:
Injured Employee:
Requestor: Ergonomic Rehabilitation of Houston
Respondent: American Casualty Company
MAXIMUS Case #: TW04-0412

MAXIMUS has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The MAXIMUS IRO Certificate Number is 5348. Texas Worker's Compensation Commission (TWCC) Rule §133.308 allows for a claimant or provider to request an independent review of a Carrier's adverse medical necessity determination. TWCC assigned the above-reference case to MAXIMUS for independent review in accordance with this Rule.

MAXIMUS has performed an independent review of the proposed care to determine whether or not the adverse determination was appropriate. Relevant medical records, documentation provided by the parties referenced above and other documentation and written information submitted regarding this appeal was reviewed during the performance of this independent review.

This case was reviewed by a practicing physician on the MAXIMUS external review panel. The reviewer has met the requirements for the ADL of TWCC or has been approved as an exception to the ADL requirement. This physician is board certified in physical medicine and rehabilitation and is familiar with the condition and treatment options at issue in this appeal. The MAXIMUS physician reviewer signed a statement certifying that no known conflicts of interest exist between this physician and any of the treating physicians or providers or any of the physicians or providers who reviewed this case for a determination prior to the referral to MAXIMUS for independent review. In addition, the MAXIMUS physician reviewer certified that the review was performed without bias for or against any party in this case.

Clinical History

This case concerns a 53 year-old female who sustained a work related injury on _____. The patient reported that while at work she injured her low back when she slipped and fell. The patient was initially treated with one month of therapy and was returned to work. The patient was then referred to a pain specialist due to continued complaints of pain and underwent epidural steroid injections. On 3/20/03 the patient underwent an EMG/NCV that indicted mild chronic left and mild to moderate chronic right L5 radiculopathies. The patient was then treated with more therapy and subsequently referred for a work hardening/conditioning program. The diagnoses for this patient have included lumbar strain/sprain and sciatica.

Requested Services

Work Hardening Initial 2 hours, Work Hardening Each Additional hour from 9/16/03 – 10/23/03.

Documents and/or information used by the reviewer to reach a decision:

Documents Submitted by Requestor:

1. Request for Reconsideration 2/13/04
2. FCE 9/10/03
3. Work Hardening Progress Notes 10/03/03 – 10/28/03
4. Ergonomic Rehabilitation Individual Care plan 9/19/03 – 10/23/03
5. Ergonomic Rehabilitation Work Hardening Weekly Staffing 9/19/03 – 10/24/03

Documents Submitted by Respondent:

1. Claim Background
2. Treatment and Physical Therapy notes 3/26/02 – 5/12/04
3. Operative Note 2/28/03
4. EMG/NCV report 3/20/03
5. DDE 5/7/03
6. Impairment Rating Report 5/19/03

Decision

The Carrier's denial of authorization for the requested services is partially overturned.

Rationale/Basis for Decision

The MAXIMUS physician reviewer noted that this case concerns a 53 year-old female who sustained a work related injury to her back on _____. The MAXIMUS physician reviewer indicated that the patient worked at a job requiring 12 hours a day of sedentary position and the ability to lift 10 pounds. The MAXIMUS physician reviewer noted that the patient received traditional physical therapy and epidural steroid injections but continued with complaints of pain. The MAXIMUS physician reviewer indicated that on 9/10/03 the patient underwent an FCE that indicated sitting tolerance to be 30 minutes, standing tolerance to be 45 minutes, and upper and lower extremity strength at least 4/5 (mild decrease from 6/10/03). The MAXIMUS physician reviewer noted that weekly reevaluations indicated very minimal increase in lumbar range of motion and an increase in pain level until week 5. The MAXIMUS physician reviewer explained that the evaluations do not indicate whether the patient's sitting or standing tolerance actually improved. The MAXIMUS physician reviewer indicated that the patient was able to lift up to 30 pounds and that mild improvement in lumbosacral spine range of motion by end of the work hardening program. The MAXIMUS physician reviewer explained that the patient was at light physical demand work capacity at initial exam and that this did not change by the end of the work hardening program. The MAXIMUS physician reviewer also explained that the patient demonstrated no significant improvement after participating in the work hardening program for three weeks. The MAXIMUS physician reviewer further explained that although the patient had returned to work after the program, the patient did not appear to have benefited from the program.

Therefore, the MAXIMUS physician consultant concluded that the Work Hardening Initial 2 hours, Work Hardening Each Additional hour from 9/16/03 – 10/7/03 were medically necessary to treat this patient's condition. However, the MAXIMUS physician consultant further concluded that the Work Hardening Initial 2 hours, Work Hardening Each Additional hour from 10/8/03 – 10/23/03 were not medically necessary to treat this patient's condition.

Sincerely,
MAXIMUS

Elizabeth McDonald
State Appeals Department